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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/376,811	08/18/1999	JOSEPH C. JENNIGES	494.004US1	6977

21186 7590 11/08/2002

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EXAMINER

GORT, ELAINE L

ART UNIT	PAPER NUMBER
3627	

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/376,811	JENNIGES ET AL. <i>u</i>
Examiner	Art Unit	
Elaine Gort	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 August 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-40 is/are pending in the application.

4a) Of the above claim(s) 26-40 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 18 August 1999 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Invention I. in Paper No. 3 is acknowledged.

The traversal is made but no ground(s) for the traversal were presented by the Applicant in Paper No. 3 and thus not found persuasive.

The requirement is still deemed proper and is therefore made FINAL.

Claims 26-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3.

***Claim Rejections - 35 USC § 101***

2. Claims 1-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Current office policy regarding method claims disclosed as requiring a computer but not claiming the use of a computer is to consider the claimed subject matter as non-statutory for failing to fall within the technological arts. Claims must be tied to a technological art. Tying the method to a computer would overcome this rejection.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5, 6, 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the desired level of performance" in line 3. There is insufficient antecedent basis for this limitation in the claim.

In claim 24 it is unclear what limitations are being claimed relating to the term "heuristically" in line 2. Examiner has taken the broadest reasonable interpretation of the term.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 10, 14-19 and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Ho et al. (US Patent 6,120,300).

Ho et al. discloses the claimed method for providing incentive (as best understood). Ho et al. discloses a method for providing incentive including: storing goal data with threshold level performance (system stores goal data established by instructor

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or other individual/sponsor which includes threshold levels e.g. milestones and rewards representing desired levels of performance; capable of quantifying by measuring anticipated performance—scoring system; student can establish desired level of performance relative to rewards); storing historical performance data of participant (e.g. performance data used in performance analysis); comparing historical performance data to the goal data and generating a result indicating progress toward goal (e.g. performance analysis and determination of reward; quantitative analysis; storage of reward data) and transmitting results (e.g. report given to instructor and participant); generates and stores a list of eligible participants (eligible participants are ones (students and instructors) capable of using system which give consent when begin using system); issuing of award (instructor or sponsor provides award); perquisite (student given perks as awards—reward medium or access to reward generator which generates reward); and heuristically modifying the predetermined goal data using performance data (system adapts for student for self education and system provides instructor feedback to adjust goals and threshold levels based on students performance).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ho et al. in view of Noori.

Ho et al. discloses the claimed method (as best understood) but is silent relating to the use of the method for providing incentives for sales, safety compliance, efficiency, cost-savings, display installation, demonstrations, and time goals. Noori discloses that it is known in the art to provide a reward system for all of these factors in order to encourage employees to act in a manner consistent with the firm's goals and objectives and to attract and keep high-quality employees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Ho et al. with the incentives for sales, safety compliance, efficiency, cost-savings, display installation, demonstrations, and time goals of Noori, in order to encourage employees to act in a manner consistent with the firm's goals and objectives and to attract and keep high-quality employees.

Regarding the participant setting goals, it is old and well known in the art of personal motivation for individuals to establish their own goals and establish awards for themselves to motivate themselves to act in a desired manner. For example, it is well known that individuals reward themselves for hard work with nice meals, breaks, chats with friends, or other things they enjoy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the above method to incorporate individuals participating in developing their own goals and awards in order to motivate themselves to act in a manner consistent with their ambitions.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

EG   
November 4, 2002

 11/4/02  
ROBERT P. OLSZEWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600